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FM AMEMBASSY GUATEMALA  
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INFO RUEHGT/AMEMBASSY GUATEMALA

UNCLAS GUATEMALA 000296

SIPDIS

E.O. 12958: N/A

TAGS: [PHUM](#) [PREL](#) [GT](#)

SUBJECT: Conviction of Publisher Raul Figueroa Overturned

REF: 09 GUATEMALA 778

¶1. (U) Summary: On February 5, the Second Court of Penal Appeals annulled a lower court conviction of Guatemalan publisher Raul Figueroa Sarti on charges of copyright infringement. Figueroa's conviction six months earlier by the Seventh Penal Court had generated substantial interest in the Washington-based human rights community and in the U.S. Congress because of its possible human rights-related overtones: Figureroa and his AmCit wife, Dr. Victoria Stanford, had argued that the lower's court's decision had been politically motivated because his work as a journalist and publisher has focused on exposing abuses by Guatemala's military governments and other sensitive human rights topics (REF). Following his acquittal, Figueroa expressed his deep appreciation to the Ambassador for the Embassy's role in attending the appeals court hearings. End Summary.

¶2. (U) The original case was brought to trial after photographer Mardo Escobar sued Figueroa for failing to pay verbally agreed royalties for the use of one of Escobar's photos on the cover of a book Figueroa published in 2006 entitled "Any Way to Die," by Rafael Menjivar. After Figueroa reportedly turned down an offer by Escobar to settle out of court, a first instance penal court convicted Figueroa on August 6, 2008, sentencing him to one year imprisonment for intellectual property rights infringement and a fifty thousand quetzales fine (approximately six thousand USD). Figueroa immediately appealed the decision and was released on bail but was barred by the court from leaving the country in the meantime.

¶3. (U) In a subsequent letter signed by over 1,500 supporters, the U.S.-based NGO "Human Rights First" urged Guatemala Attorney General Amilcar Velasquez to support overturning Figueroa's conviction, which it described as "baseless." The letter also noted that Figueroa "has published dozens of groundbreaking human rights texts, including the final report of the UN-backed truth commission which investigated Guatemala's internal armed conflict and concluded that genocide had occurred." The Embassy received similar letters regarding the case from Guatemalan-based human rights NGOs as well as letters from Figueroa's AmCit wife, Dr. Victoria Stanford, and U.S. Congressman James P. McGovern of Massachusetts. The Ambassador urged the Attorney General to ensure that his prosecutors were not exceeding their prosecutorial duties in this case.

¶4. (U) At his January 27 appeals court hearing attended by post's human rights officer, Figueroa argued that he had never broken the law and that the decision of the first instance court was based on false testimony. He also claimed that he never caused the plaintiff, Mardo Escobar, any damage; that on the contrary, publishing his photo on the book cover had benefited him. He admitted he should have had a written contract to use the photo, but told the tribunal he had not bothered to do so since his business relationship with Escobar had been built on trust. He

accused the prosecutor of failing to fully investigate the facts of the case, and criticized the Attorney General's office for having wasted its time and energy on this case when nearly 6,500 Guatemalans, a record number, had been murdered in 2009. He summarized the case as "absurd, unjust, and illegitimate."

15. (U) Following the January 27 hearing, the appeals court adjourned to consider the testimony. The tribunal reconvened on February 5 when it announced its decision absolving Figueroa of all charges and lifting his travel restrictions. Figueroa was delighted with the verdict, asserting in front of assembled television and print media afterwards that he was extremely satisfied with the court's decision. While justice had been served, he claimed that he and his family had suffered greatly as a result of the false charges that had been brought against him. Outside the courtroom afterwards, Figueroa asked human rights officer to convey his deep appreciation to the Ambassador and the Embassy for having taken an interest in his case and for having attended the appeals proceedings. He also acknowledged that while the Attorney General Office's has the right to appeal the decision to the Supreme Court, he thinks it is very unlikely that this will occur.

MCFARLAND